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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,729

06/30/2006

Volker Mohr

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EXAMINER

KOPPIKAR, VIVEK D

ART UNIT

PAPER NUMBER

3686

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,729	<b>Applicant(s)</b> MOHR, VOLKER	
	<b>Examiner</b> VIVEK D. KOPPIKAR	<b>Art Unit</b> 3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Application***

1. Claims 11-20 have been examined in this application. This communication is a Final Office Action in response to the communication received from the applicants on August 6, 2009.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. A. Claims 11-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims are directed towards a method for automatically processing and evaluating medical data for the purpose of determining and providing diagnostic and/or medical-care relevant information based on a plurality of available data sources but the claims do not recite a device (e.g. a computer) which is used for carrying out the claimed method. Therefore, these claims are not tied to a statutory class of invention. In order to overcome this rejection, the Office recommends amending the claims so that they recite a device (e.g. a computer) which is used in carrying out the claimed method. The applicants are reminded, however, that any amendment(s) to the claim(s) must have support in the specification as it was originally filed.

B. Claim 20 is rejected under 35 U.S.C. 101 because it is not clear what statutory class the invention delineated in Claim 20 belongs to. Even though the preamble of Claim 20 appears to be directed towards an apparatus or system claim, the body of claim 20 appears to incorporate method steps. Appropriate correction is required. The Office

Art Unit: 3686

recommends amending this claim in such a manner so that it will be clear as to what statutory class the invention delineated in this claim belong to.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent Application Publication 2002/0082870 to Penny.

(A) As per claim 11, Penny teaches a method for automatically processing and evaluating medical data for the purpose of determining and providing diagnostic and/or medical-care relevant information based on a plurality of available data sources (Penny: Abstract),

characterized in that

all data sources are acquired in a common data pool (Penny: Section [0023]);

each data source is evaluated based on predetermined criteria (Penny: Section [0038]);

the results of the evaluation (rating) is saved with correlation to the data source (Penny: Section [0038]);

the data contained in the data pool is referenced in such a way that elements of the data pool that are correlated with regard to contents are linked and can be displayed automatically as being correlated (Penny: Sections [0023], [0030] and [0038]), and

Art Unit: 3686

based on the data sources in accordance with predetermined boundary conditions, a structured summary (aggregate) in the form of a virtual data sheet is produced (Penny: Sections [0023], [0030] and [0038]).

(B) As per claim 12, in Penny the method is characterized in that the criteria based on which each data source is evaluated comprises at least one criterion, preferably all criteria, of the following list of criteria: origin of the data source, quality of the data source, age of the data source, formal quality of the data source, contents of the data source (Penny: Sections [0030] and [0038]).

(C) As per claim 13, in Penny the virtual data sheet information is combined to blocks wherein the blocks contain information to at least one, preferably all, aspects of the following list of aspects: identity of the patient, special risks, vaccination status, blood type, diagnoses, surgeries/interventions, current therapies, symptoms/differential diagnosis, current diagnostics, catheter/implants, stoma/wounds, organ function profile central nervous system, organ function profile heart, organ function profile blood vessels, organ function profile lungs/tracheal bronchial tract, organ function profile kidneys/urinary tract, organ function profile liver/biliary tract, organ function profile gastrointestinal tract, organ function profile pancreas, organ function profile genital system, organ function profile blood/coagulation, organ function profile endocrine system, organ function profile metabolism, organ function profile immunological system, organ function profile peripheral nervous system, organ function profile skin/mucous membranes, organ function profile skeleton/muscles/connective tissue, organ function profile

Art Unit: 3686

eyes/throat/nose/ears, organ function profile teeth status, social status and care status (Penny: Section [0035]).

(D) As per claims 14-19, these claims are substantially similar to Claims 11-13 and are rejected in the same manner as these claims, which is set forth above.

(E) As per claim 20, Penny teaches an arrangement for processing and evaluating medical data for the purpose of determining diagnostic and/or medical-care relevant health data based on a variety of available data sources, characterized in that a computer system with a number of components is provided and configured for performing a method according to one of the claims 1 to 9 (Penny: Sections [0023], [0030], [0035] and [0038]).

### ***Response to Arguments***

6. Applicants have requested that a new office action be issued in their communication filed with the Office on August 6, 2009 that addresses Claims 11-20 set forth in their preliminary amendment dated June 30, 2006 rather than Claims 1-10. In response, the Office is issuing this Office Action which addresses Claims 11-20. However, the Office takes the position that Claims 11-20 are substantially similar to Claims 1-10 which were addressed in the last Office Action which was issued by the Office on July 1, 2009 and, therefore, the prior art rejections set forth over Claims 1-10 are equally applicable to Claims 11-20. Because the applicants did not argue against the merits of the prior art rejections set forth in the Office Action issued on July 1, 2009, the Office is maintaining the prior art rejections set forth in this earlier Office Action and is making this instant Office Action a Final Rejection.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Jerry O'Connor, can be reached at (571) 272-6787. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available

Art Unit: 3686

through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

/Vivek D Koppikar/

Primary Examiner, Art Unit 3686

3/8/2010